

# **Acquisition Reform in House- and Senate- Passed Versions of the FY2016 National Defense Authorization Act (H.R. 1735)**

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## Introduction

For purposes of this analysis, CRS selected 35 sections of the House-passed version of FY2016 National Defense Authorization Act (H.R. 1735), and 47 sections of the Senate-passed version of FY2016 NDAA (also H.R. 1735) that appear closely linked to the respective committee's efforts to reform the acquisition system (excluding Sense of Congress).<sup>1</sup> Each section is identified as fitting into one (or more) of the following four overarching categories:

1. gathering information for future action,
2. streamlining the current process,
3. improving the effectiveness of the current process, and/or
4. improving the performance of the workforce (through recruitment, professional development, or empowering decision-making).

## Comparison of House and Senate Bills

The acquisition reform sections of the House and Senate versions of the FY2016 NDAA have many similarities. More than half of the provisions in the Senate bill address the same issues found in the House bill. (See **Appendix A, Table A-1** for analysis of the sections in the House bill that correspond to sections in the Senate bill.) In some sections, the language in each bill is virtually identical.<sup>2</sup> Despite these similarities, the bills have striking differences in length (the Senate version is longer), the philosophical approach taken to reform acquisitions, and the content of the bills.

Taken as a whole, the House bill was not intended to be a panacea for what ails defense acquisitions. Rather, it is intended to serve as an initial step in a multi-year, collaborative effort to improve acquisitions. As the committee's report states, "... this bill is the first substantive step towards comprehensive reform, the committee recognizes that instituting lasting reform is a long-term, collaborative effort, and therefore, it looks forward to working with all key stakeholders to build upon this product."<sup>3</sup> The bill requests more information than does its Senate counterpart. Viewed in this context, the House bill's effectiveness in improving defense acquisitions may depend less on the extent to which provisions of the bill make substantive changes to acquisitions, and more on the extent to which the bill sets forth a vision, and sets in motion a chain of events, that lead to comprehensive (and effective) acquisition reform in the future.

In contrast, the Senate bill takes a more sweeping and immediate approach to acquisition reform; by itself, the Senate bill would have a significant effect on defense acquisitions. One example of the differing approaches of the two bills is how each addresses the role of the military services in

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<sup>1</sup> Because the House Armed Services Committee's focus on small business predates the current reform effort, and because small business provisions also affect only a specific segment of the industrial base, not the overall acquisition system, such sections were excluded from the analysis. Sections making pilot programs permanent were also generally excluded from the analysis because previously established pilot programs predate the current effort.

<sup>2</sup> See the Senate bill, sections 841, 842, 844, 845, 848, 864, 872. For similar sections in the House bill, see **Table B-1**.

<sup>3</sup> U.S. Congress, House Committee on Armed Services, *Report of the Committee on Armed Services House of Representatives on H.R. 1735*, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 5, 2015, H.Rept. 114-102, p. 3. This is consistent with numerous prior statements of Chairman Mac Thornberry. In a speech at the Center for Strategic and International Studies on March 23, 2015, Chairman Thornberry reportedly stated that H.R. 1597 (Agile Acquisitions to Retain Technological Edge Act), the acquisition reform bill that was the basis for much of the acquisition reform sections found in H.R. 1735 (National Defense Authorization Act for FY2016) will not fix acquisition but that it is a good start and that "reform must be one of our top priorities" for him and his Senate counterpart Senator John McCain. See <http://news.usni.org/2015/03/23/thornberry-announces-acquisition-reform-legislation>.

acquisitions. The House bill calls for the military services to submit a report to Congress on the role of service chiefs in the acquisition process (Section 802) and a report on how to link requirements, acquisitions, and budgeting (Section 801) within the respective services. In contrast, the Senate version calls for immediately implementing changes that would enhance the role of the military departments in acquisitions (Section 801), including designating service acquisition executives as the milestone decision authority for Major Defense Acquisition Programs (Section 843).

## House-Passed Version

Two sections of H.R. 1735 as passed by the House (Sections 800 and 821) seek to articulate the guiding principles underlying the acquisition reform effort. As articulated, the House assumptions underpinning the acquisition reform efforts can be summarized as follows:

1. The Department of Defense (DOD) buys more goods and services than can be realistically supported by the defense budget;
2. Both DOD and Congress are complicit in pursuing acquisition strategies that downplay technical risk and underestimate cost (often without clearly defined and carefully thought out requirements);
3. The acquisition process is weighed down by too many rules, bureaucratic hoops, and outdated regulations, resulting in an acquisition process that is not agile enough, too risk averse, and takes too long to deliver; and
4. Past reform efforts have floundered, in part, because they failed to address the motivational and environmental factors in which they must be implemented.

The House bill does not directly address budget issues, focusing instead on various issues relating to the acquisition workforce, streamlining reporting and approval processes, tweaking the current acquisition system, and requesting information or analysis that can be used for future action. Of the sections in the House bill related to acquisition reform,<sup>4</sup> approximately

- 25% seek to gather information by requiring reports or mandating reviews;
- 30% seek to streamline the acquisition process;
- 40% mandate changes to the system intended to improve the process; and
- 30% seek to improve the performance of the acquisition workforce through recruitment, development, training, retention, and/or empowering decision-making.<sup>5</sup>

Two of the more significant sections in the bill relate to workforce: Section 811, which would make permanent the Defense Acquisition Workforce Development Fund, and Section 812, which would create a dual-track career path in operational and acquisition disciplines for uniformed personnel. Also of note is Section 854, which would increase the Simplified Acquisition Threshold from \$150,000 to \$500,000.<sup>6</sup> (To see how each section is categorized, see **Appendix A, Table A-1.**)

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<sup>4</sup> Excluding Section 800 and 821.

<sup>5</sup> Percentages do not equal 100% because some sections of the bill fall into more than one category.

<sup>6</sup> The simplified acquisition threshold determines what purchases can use a simplified acquisition—a streamlined method for making purchases of supplies or services as described in FAR Part 13.

## Senate-Passed Version

Of the sections in the Senate-passed version of H.R. 1376 that relate to acquisition reform, approximately

- 10% seek to gather information by requiring reports or mandating reviews;
- 40% seek to streamline the acquisition process;
- 30% mandate changes to the system intended to improve the process; and
- 40% seek to improve the performance of the acquisition workforce through recruitment, development, training, retention, and/or empowering decision-making.<sup>7</sup>

Like the House bill, the Senate bill extends the Defense Acquisition Workforce Development Fund and creates a dual-track career path for uniformed personnel, to encompass acquisitions. However, the Senate bill has other sections that, if enacted, would have a significant impact on defense acquisitions. Perhaps the most controversial and far reaching sections of the bill are those related to enhancing the role of the service Chiefs of Staff and the military departments in the acquisition process (Sections 801, 843, 849, and 851). As some analysts have pointed out, these sections

significantly reverse course on the direction of the last 30 years by altering the flow of acquisition authority established under the Goldwater-Nichols Act of 1986 and reducing the authority of the combatant commanders and the Joint Staff.<sup>8</sup>

Reversing course and giving the service chiefs more authority over acquisitions is precisely what some analysts and officials have called for, most notable John Hamre of the Center for Strategic and International Studies, and Army Chief of Staff General Ray Odierno.<sup>9</sup> Many other analysts have taken the opposite view, and the Administration “strongly objects” to these provisions, arguing that if enacted, they would

significantly reduce the Secretary of Defense’s ability—through the Under Secretary of Defense for Acquisition, Technology and Logistics USD(AT&L)—to guard against unwarranted optimism in program planning and budget formulation, and prevent excessive risk taking during execution—all of which is essential to avoiding overruns and costly delays.<sup>10</sup>

The Senate bill also seeks to create a new acquisition process for rapid prototyping and fielding of middle tier programs (Section 803), and has a number of sections that could have a significant effect on workforce policies (sections 847, 1101-1103). The Senate bill also calls for establishing a panel to conduct an in-depth analysis of the rules and regulations of the acquisition system, and to provide recommendations within two years of enactment of the bill (Section 808). A number of

<sup>7</sup> Percentages do not equal 100% because some sections of the bill fall into more than one category.

<sup>8</sup> Andrew Hunter, *So You Say You Want a Revolution?*, Center for Strategic and International Studies, A Primer for Understanding Senate and House Proposals for Defense Acquisitions, June 15, 2015, p. 1.

<sup>9</sup> John Hamre, “Commentary: Return Acquisition Role to Service Chiefs,” *DefenseNews*, May 26, 2015, <http://www.defensenews.com/story/defense/commentary/2015/05/26/return-acquisition-role-service-chiefs-ddre-goldwater-nichols-packard-carter/27970691/>; Daniel Wasserbly, “AUSA Global 2015: Odierno supports expanded acquisition role for chiefs, streamlined testing,” *IHS Jane’s Defence Weekly*, vol. 52, no. 20 (April 1, 2015), at <http://www.janes.com/article/50394/ausa-global-2015-odierno-supports-expanded-acquisition-role-for-chiefs-streamlined-testing>.

<sup>10</sup> Executive Office of the President Office of Management and Budget, *Statement of Administration Policy*, S. 1376—National Defense Authorization Act for FY 2016, June 2, 2015, p. 3, [https://www.whitehouse.gov/omb/114/legislative\\_sap\\_date\\_2015](https://www.whitehouse.gov/omb/114/legislative_sap_date_2015).

these sections seek to clarify accountability within the acquisition process. (To see how each section is categorized, see **Appendix B, Table B-1.**)

## Appendix A. Sections in the House Bill Relating to Acquisition Reform

**Table A-1** categorizes select sections of the House-passed H.R. 1735 into four overarching categories or goals:

1. Gathering information for future action,
2. Streamlining the current process,
3. Improving the effectiveness of the current process, and
4. Improving the performance of the workforce (through recruitment, professional development, or empowering decision-making).

Workforce is further identified by three subcategories:

1. Empowering the workforce/enabling decision-making,
2. Developing and improving the capabilities of the workforce, and
3. Recruitment/retention of the workforce.

Because sections 800 and 821 are Senses of Congress that articulate the intent of the acquisition reform effort, these sections are identified in **Table A-1** as guiding principles.

**Table A-1. Selected Sections in the House Bill Relating to Acquisition Reform**

Section	Description	Goal
<b>Title III—Operations and Maintenance (Subtitle C—Logistics and Sustainment)</b>		
321	Assigning appropriate workforce (uniformed, civilian, or contractor) based on cost-efficiency	Improving effectiveness
<b>Title VIII—Acquisition Policy, Acquisition Management, and Related Matters</b>		
800	Sense of Congress—Desired tenets of the acquisition system	Guiding principles
<b>Subtitle A—Acquisition Policy and Management</b>		
801	Report by the Military Services on linking requirements, acquisitions, and budgeting	Gathering information
802	Report by Military Services of the Role of Service Chiefs in the acquisition process	Gathering information
803	Report on Bid Protests by independent research organization	Gathering information
804	Establishing centralized capability for making commercial item determinations	Improving effectiveness
805	Easing and simplifying ability to make commercial item determination for major weapon systems and subsystems	Streamlining/Workforce (empowering)
806	Easing use of Multiyear Procurement	Streamlining/Workforce (empowering)
807	Requiring compliance with service inventory data collection	Gathering information
<b>Subtitle B—Workforce Development and Related Matters</b>		
811	Permanent Extension of DAWDF (Defense Acquisition Workforce Development Fund)	Workforce (developing/recruitment)
812	Dual-track career path in operational and acquisition disciplines	Workforce (recruitment)

Section	Description	Goal
813	Granting joint-duty credit for acquisition duty	Workforce (recruitment)
814	Requiring assessment of acquisition skills in strategic workforce plans	Gathering information
815	Training acquisition personnel in market research	Workforce (developing)
816	Report by independent organization on effectiveness of DOD acquisition workforce strategic planning	Gathering information
817	Extending the civilian acquisition workforce personnel demonstration project	Workforce (developing)
<b>Subtitle C—Weapon Systems Acquisition and Related Matters</b>		
821	Sense of Congress—Desired tenets of weapon systems acquisition	Guiding principles
822	Requiring an acquisition strategy for each Major Defense Acquisition Program; consolidating requirements	Improving effectiveness/streamlining
823	Requiring risk management strategy in the acquisition strategy	Improving effectiveness
824	Modifying requirements to contract type	Improving effectiveness
825	Written determination in lieu of certifications for Milestone A	Streamlining process
826	Written determination in lieu of certifications for Milestone B	Streamlining process
<b>Subtitle D—Industrial Base Matters</b>		
835	Report by independent entity on rules and regulations governing intellectual property rights, and DOD proposals to revise related statutes	Gathering information
846/847 <sup>a</sup>	Limiting reverse auctions	Improving effectiveness
<b>Subtitle E—Other Matters</b>		
851	Requiring consideration of the effect of cost and schedule in operational testing and evaluation	Improving effectiveness
852	Allowing prior purchase price as determination of price reasonableness	Improving effectiveness
854	Raising the Simplified Acquisition and Micro-purchase Threshold	Improving effectiveness/ Workforce (empowering)
856	Repealing requirement for a stand-alone manpower estimate	Streamlining process
857	Requiring DOD to examine and then issue guidance on the acquisition of services	Gathering information/improving effectiveness
858	Reorganization of the process and responsibilities for acquiring business systems	Streamlining/ Improving effectiveness
860/864 <sup>a</sup>	Require best value for acquiring personal protective equipment/Require stricter metrics for using LPTA for acquiring audit services	Improving effectiveness
862	Altering roles of Deputy Assistant Secretaries of Developmental Testing and of Systems Engineering from approval authority to advisory role	Streamlining/Workforce (empowering)
<b>Title X—General Provisions (Subtitle G—Repeal or Revision of National Defense Reporting Requirements)</b>		
1076	Repeal of annual report on root causes of cost growth	Streamlining process



**Source:** H.R. 1735, the National Defense Authorization Act for FY2016; H.Rept. 114-102, *Report of the Committee on Armed Services of the House of Representatives on HR. 1735*.

**Notes:**

- a. Sections consolidated due to their similarity. For purposes of analysis, consolidated sections are counted as a single section.

## Appendix B. Sections in the Senate Bill Relating to Acquisition Reform

**Table B-1** categorizes select sections of the Senate-passed H.R. 1735 into four overarching categories or goals:

1. Gathering information for future action,
2. Streamlining the current process,
3. Improving the effectiveness of the current process, and
4. Improving the performance of the workforce (through recruitment, professional development, or empowering decision-making).

Workforce is further identified by four subcategories:

1. Empowering the workforce/enabling decision-making,
2. Developing and improving the capabilities of the workforce,
3. Recruitment/retention of the workforce, and
4. Establishing more accountability for certain personnel.

**Table B-1. Selected Sections in the Senate Bill Relating to Acquisition Reform**

Section	Description	Goal	House (H.R. 1735) Equivalent
<b>Title V—Military Personnel Policy (Subtitle A—Officer Personnel Policy)</b>			
503	Dual-track career path and joint-duty credit for uniformed personnel in acquisitions	Workforce (recruitment)	812/813
<b>Title VIII—Acquisition Policy, Acquisition Management, and Related Matters</b>			
<b>Subtitle A- Acquisition Policy and Management</b>			
801	Enhancing role of service chiefs in acquisition process	Improving effectiveness/ Workforce (accountability)	802
802	Expanded rapid acquisition authority	Streamlining/Workforce (empowering)	-
803	Creation of new process for rapid prototyping and fielding of middle tier programs	Streamlining process	-
805	Require DOD to establish new processes for acquiring capital assets and services that are streamlined and flexible	Streamlining process	-
806	Authority to waive acquisition laws in specified circumstances	Streamlining/ Workforce (empowering)	-
808	Establishing panel to review acquisitions regulations	Gathering information/improving effectiveness	-
809	Require DOD review of requirements, budgeting, and acquisitions	Streamlining process	801

810	Require DOD review and issue policies to improve program management and career development	Workforce (development)	814/816
<b>Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations</b>			
821	Require preference for fixed price contracting in development programs	Improving effectiveness	824
823	Raising the threshold for cost or pricing data for non-commercial items and implementing a risk-based approach for requesting such data	Improving effectiveness/ streamlining	852
824	Limiting reverse auctions and lowest price technically acceptable contracting for protective equipment	Improving effectiveness	860/846/847
825	Amending statute on technical data as it relates to weapon systems and requiring DOD review of statutes relating to technical and proprietary data	Gathering information	835
<b>Subtitle C—Provisions Relating to Major Defense Acquisition Programs</b>			
841	Requiring an acquisition strategy for each Major Defense Acquisition Program; consolidating requirements	Improving effectiveness/ streamlining	822
842	Requiring risk management strategy in the acquisition strategy	Improving effectiveness	823
843	Designating service acquisition executives as the milestone decision authority for MDAPs	Streamlining process	802
844	Determination in lieu of certifications for Milestone A	Streamlining process	825
845	Determination in lieu of certifications for Milestone B	Streamlining process	826
846	Revise DOD guidance on tenure of program managers	Workforce (recruitment and retention)	-
847	Accountability and authority of program managers	Workforce (empowering/ accountability)	-
848	Repealing requirement for a stand-alone manpower estimate	Streamlining process	856
849	Military services pay penalty for cost overruns in MDAPs	Workforce (accountability)	-
850	Altering reporting requirements of the Assistant Secretary of Defense for Research and Engineering	Streamlining process	-
851	Requiring Configuration Steering Boards to get Service Chief approval of changes in program requirements	Improving effectiveness/ workforce (accountability)	-
<b>Subtitle D—Provisions Relating to Commercial Items</b>			
861-863/866 <sup>a</sup>	List of laws and regulations that do not apply to purchases of commercial items/preference for commercial items in IT/commercial item determinations	Streamlining/improving effectiveness	804/815
864	Easing and simplifying ability to make commercial item determination for major weapon systems and subsystems	Streamlining/ workforce (empowering)	805

865	Limit conversion of commercial acquisition to non-commercial acquisition	Improving effectiveness	804
<b>Subtitle E—Other Matters</b>			
871	Reorganizing the process and responsibilities for acquiring business systems	Streamlining/ Improving effectiveness	858
872	Extension of DAWDF (Defense Acquisition Workforce Development Fund); modification of acquisition strategic workforce plans	Workforce (developing/recruiting )	811/814/816
873	DOD report on how to better procure and deploy IT services	Gathering information	-
874	Require DOD to develop a strategy for cloud computing for the Secret Internet Protocol Network	Improving effectiveness	-
875	Promoting time-certain development for major automated information systems	Streamlining process	-
879	Report on cost of complying with acquisition regulations	Gathering information	-
880	Report on Bid Protests by GAO	Gathering information	803
881	Identifying potential unfair competitive advantages	Improving effectiveness	-
<b>Title X—General Provisions (subtitle F—Studies and Reports)</b>			
1062	Termination of requirement to submit reports to Congress required by statute	Streamlining process	1076
<b>Title XI—Civilian Personnel Matters</b>			
1101-1103 <sup>a</sup>	General civilian workforce provisions that would significantly impact civilian acquisition personnel	Workforce (accountability)	-
1106	Five year extension of expedited hiring authority for acquisitions	Workforce (recruitment)	811
1110	Extending the civilian acquisition workforce personnel demonstration project	Workforce (developing)	817
1112	Pilot exchange program for acquisition personnel	Workforce (developing)	-
1113	Pilot program on pay authority for limited acquisition and technology personnel	Workforce (recruitment)	-
1115	Direct hiring authority into the acquisition workforce for technical experts	Workforce (recruitment)	-

**Source:** Senate-passed H.R. 1735; S.Rept. 114-49, *Report of the Committee on Armed Services of the House of Representatives to Accompany S. 1376*.

**Notes:**

- a. Sections consolidated due to their similarity. For purposes of analysis, consolidated sections are counted as a single section.

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